

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio Services)

To: The Commission

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REPLY COMMENTS
OF
THE SOUTHERN COMPANY

The Southern Company ("Southern") by its attorneys and pursuant to Section 1.415 of the Federal Communications Commission's Rules, submits these Reply Comments in response to the Second Notice of Proposed Rule Making ("Second NPRM") released April 20, 1995 in the above-captioned proceeding.^{1/}

INTRODUCTION

1. Southern has been an active participant in this proceeding, as it has filed Comments during the first stage when the Commission was seeking Comments on its Notice of

^{1/} Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Notice of Proposed Rule Making, FCC 95-149, 60 Fed. Reg. 20949 (April 28, 1995).

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Proposed Rule Making and Notice of Inquiry regarding interconnection, equal access, resale and roaming issues. Southern also filed Comments in this Second NPRM, urging the Commission not to adopt and impose resale obligations on the SMR service. Southern also recommended the Commission to adopt Commercial Mobile Radio Service ("CMRS")-to-CMRS interconnection only on a service-by-service basis.

2. Southern has had an opportunity to review the Comments filed in this Second NPRM, and finds that many parties seeking to impose uniform resale obligations on all CMRS providers failed to recognize the distinctions regarding Specialized Mobile Radio ("SMR") service, and failed to provide any rational justification or analysis for their positions. Southern maintains that the wide-area SMR (dispatch) is a distinct service which warrants different regulatory treatment, especially regarding resale obligations. Southern specifically wishes to address the Comments regarding the resale issue in these Reply Comments.

REPLY COMMENTS

I. There Is No Consensus Regarding Imposing Resale Obligations on CMRS Providers

3. Although the Commission has tentatively concluded that the existing obligation on cellular providers to permit resale should be extended to apply to CMRS providers, there was no agreement among the commenting parties on this issue. While some parties supported the Commission's tentative conclusion, most parties staked out positions favorable to their particular market segment. For example, the paging industry sought exemption from resale obligations.^{2/} WJG MariTEL sought exemption of public coast stations from resale obligations due to lack of spectrum capacity.^{3/} The 800 and 900 MHz SMR licensees, like Southern, also opposed the Commission's tentative decision to impose resale obligations on all CMRS providers.^{4/} GTE sought exemption of air-to-ground services from resale obligations due to incompatible equipment and limited spectrum capacity.^{5/} A

^{2/} Comments of Paging Network, Inc. at 2-11, Airtouch at 7 and Mobile Media Communications, Inc. passim.

^{3/} Comments of WJG MariTEL at 6-8.

^{4/} Comments of Southern at 3-9, Geotek at 4-8, American Mobile Telecommunications Association at 7-14 and Nextel at 8-10.

^{5/} Comments of GTE at 16-22

few Personal Communications Service ("PCS") players also opposed imposition of resale obligations on PCS providers because of the regulatory hurdles they face before they can begin offering service. For example, APC argues that auctions and relocation of incumbent 2 GHz microwave licensees already present barriers to PCS. APC stated that PCS licensees need complete control over the use of their networks during the first few years until service is established and profitable. APC argued that imposing resale obligations on PCS providers will hinder rather than enhance the initiation of PCS services.^{6/}

4. Moreover, the parties who supported the Commission's tentative decision regarding resale could not agree on many issues. First, there were some concerns regarding the rates, terms and conditions of resale. Many parties feared that resellers could require CMRS providers to incur large capital expenditures to accommodate resellers.^{7/} Second, there were inconsistent views on what should be the sunset period for facilities-based

^{6/} Comments of APC at 9-11.

^{7/} Comments of Vanguard Cellular at 10-11.

carriers.^{8/} Parties also differed on whether the reseller switch proposal, regarding the unbundling of CMRS services should be adopted. Naturally, all of the cellular resellers supported this proposal, but virtually all other commenters opposed the unbundling of services and the placing of a reseller switch at the providers' prime location. Finally, parties could not agree on whether number portability should be required for wireless services. These inconsistent views on resale lead Southern to believe that the Commission should re-evaluate its tentative decision to extend resale obligations to all CMRS providers. The CMRS industry does not seem in agreement, and in some instances, technically and economically able, to meet resale requirements.

II. The Record Supports Exempting SMR Providers from the Resale Obligations

5. Southern specifically opposes imposition of resale requirements on the wide-area SMR (dispatch) service. Southern agrees with the comments of AMTA, PCIA, Nextel and E.F. Johnson stating that mandatory resale is unnecessary

^{8/} See Comments of Vanguard Cellular at 11-12, NYNEX at 8, Southwestern Bell at 18-19, Cellular Telecommunications Industry Association at 25 (advocating five years), Comments of Bell Atlantic at 11 (advocating two years), Comments of AT&T at 28 (advocating 18 months), Comments of New Par at 23 (advocating one year), and Comments of General Services Administration at 8 (advocating that no sunset period be imposed at all).

for the SMR industry. First, resale is not necessary to "jump start" the well-developed and mature SMR industry.^{9/} Second, AMTA, PCIA, E.F. Johnson and Nextel agree with Southern that there is insufficient SMR spectrum capacity to accommodate resellers.^{10/}

6. Southern continues to believe that CMRS providers who have made substantial investments in the construction and operation of their systems should not be required to surrender control of their systems to resellers who may never have any intention of constructing their own systems. With the limited system capacity, SMR operators cannot afford such unlimited access to their systems. Again, Southern is uniquely situated in that it must meet internal operating needs as well as provide services to subscribers, further limiting the potential capacity available to resellers.

7. Those commenters who suggested that the Commission impose resale obligations uniformly on all CMRS providers failed to recognize the technical and market relevant

^{9/} Comments of Southern at 4-8, AMTA at 7-8 and Nextel at 8-10.

^{10/} Comments of AMTA at 10, 13-14, PCIA at 16, E.F. Johnson at 3 and Nextel at 13.

distinctions of SMR systems which warrant a difference in regulatory treatment. Furthermore, commenters advocating uniform resale obligations for all CMRS providers could not provide any rationale for such requirement other than regulatory parity. However, parity in and of itself is not an ultimatum. The Budget Act gives the Commission the discretion to specify by regulations those provisions of Title II which are inapplicable to a service.^{11/} Accordingly, Southern urges the Commission to exempt SMR providers from resale obligations.

III. The Record Supports Abstaining from General CMRS-to-CMRS Interconnection and Roaming Obligations at This Time

8. There was a consensus among the commenters that the CMRS market was too nascent to impose broad CMRS-to-CMRS interconnection obligations at this time. Many parties supported Southern's view that the Commission should allow interconnection to evolve with private negotiations and use of the Sections 201 and 208 complaint process.^{12/} Southern continues to recommend that the Commission proceed

^{11/} Omnibus Budget Reconciliation Act of 1993, P.L. No. 103-66, § 6002, 107 Stat. 379, 393 (1993).

^{12/} See e.g., Comments of GTE at 8-9, SNET Cellular at 5, ALLTEL Mobile at 1-2, Sprint at 2-3 and Western Wireless Corporation at 2-3.

on a service-by-service basis until full CMRS-to-CMRS is attainable.

9. Southern continues to advocate that a general policy acknowledging roaming as a necessary component of interconnection must be adopted, and must be handled in a similar manner to the Commission's policy for CMRS interconnection. Specifically, Southern maintains that the Section 208 and 201 complaint process must be available for aggrieved parties as a result of deadlocked roaming negotiations. Other commenters agreed. For example, NYNEX supported encouraging parties to mutually agree to roaming arrangements rather than mandated roaming arrangements. It suggested that failure to mutually agree should trigger the FCC complaint process.^{13/}

CONCLUSION

10. Southern urges the Commission to abstain from imposing resale obligations on SMR providers, recognizing that technical distinctions of the SMR market make resale impractical for the SMR industry. Southern also urges the Commission to adopt general interconnection and roaming

^{13/} Comments of NYNEX at 7.


policies which would allow CMRS providers to privately negotiate such arrangements and avail themselves to the Title II complaint processes if necessary.

WHEREFORE, THE PREMISES CONSIDERED, The Southern Company respectfully requests that the Commission act upon its Second Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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